

No. 1-10-2175

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	APPEAL FROM THE
Plaintiff-Appellee,)	CIRCUIT COURT OF
)	COOK COUNTY
)	
v.)	No. 08 CR 21150
)	
)	HONORABLE
)	MARGUERITE
ZIPPORAH MORALES,)	ANN QUINN,
Defendant-Appellant.)	JUDGE PRESIDING.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Murphy and Salone concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant was convicted of obstructing a police officer and sentenced to 21 days in jail. The trial judge did not abuse her discretion in excluding the contents of the defendant's discussion with a police sergeant as hearsay. Defendant failed to show the trial judge abused her discretion in refusing a jury instruction on impeachment by prior inconsistent statements. The judgment of the circuit court of Cook County is affirmed.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Zipporah Morales was found guilty of obstructing a police officer and sentenced to 21 days in jail. On appeal,

Morales argues the trial judge denied her constitutional right to present a defense by improperly excluding testimony regarding her complaint to a police sergeant at the scene as hearsay.

Morales also argues her conviction must be reversed because the trial judge improperly erred in failing to instruct the jury on impeachment by prior inconsistent statements. For the following reasons, we reject Morales's arguments and affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 The record on appeal discloses the following facts. Prior to trial, Morales filed a motion *in limine* seeking to bar the State from revealing the result of an official police investigation into a misconduct complaint she filed against Evanston police officer Kevin Campbell, the arresting officer in this case. Morales planned to testify she initially complained to Evanston Police Sergeant Davis (no first name given) that Officer Campbell punched her and Sergeant Davis told her to file a complaint at the police station because he could not address the issue on the scene. Morales filed a formal complaint against Officer Campbell, which ended in his exoneration. Morales argued that her statement that she complained to Sergeant Davis about Officer Campbell should open the door to the results of the formal investigation. The State responded that it did not intend to introduce such evidence, but reserved the right to do so in rebuttal if Morales elicited evidence of the complaint. The trial judge ruled that the State could introduce the evidence in rebuttal if Morales testified about the complaint.

¶ 5 At trial, Evanston police officer Anthony Correa testified that on March 15, 2008, at approximately 2:45 p.m., he was assigned to patrol the area around a repast following a funeral for a recent homicide victim. Officer Correa stated that approximately 150 people had gathered

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at a community center called Family Focus. Officer Correa was told a fight had erupted inside Family Focus.

¶ 6 According to Officer Correa, people were arguing and yelling inside the center. He and his partner tried to move through the crowd, which was difficult because people were involved in various arguments. Officer Correa observed Morales's brother Sheldon and an Elmo Hatfield among those fighting.

¶ 7 Officer Correa also testified that Morales disregarded police commands to step back from the fighting. As Officer Correa and other police gave verbal commands and tried to push the crowd back, Morales was reaching over, telling the police to get their hands off her brother and asserting he had done nothing and the police could not do this to him. Officer Correa further testified Morales and others had to be physically removed from Family Focus. Officer Correa acknowledged he did not specifically mention Morales in his police report, stating her actions were similar to 20 or 30 others in the crowd.

¶ 8 Officer Campbell testified he also arrived at Family Focus at approximately 2:45 p.m. and observed multiple fights among a group of over 100 people. Officer Campbell stated he had received crowd control training and his primary goal was to remove people from the area, stop the fighting and restore order. According to Officer Campbell, people not actively engaging in fights were allowed to leave the scene on their own.

¶ 9 Officer Campbell further testified he was escorting two more of Morales's brothers, Darius and Erin, when Morales approached. Officer Campbell instructed Morales to leave the area. Officer Campbell observed Sheldon resisting arrest. Groups of people began to crowd

around the arrest. Officer Campbell and other police formed a perimeter around the officer trying to arrest Sheldon. Officer Campbell stated he told the crowd to disperse, but Morales approached again and appeared aggressive, trying to get through to her brother Sheldon. Officer Campbell repeatedly told Morales to stay away and maintained the perimeter by pushing her away from her brother.

¶ 10 Moreover, Officer Campbell testified that shortly thereafter, he formed another perimeter to stop people from interfering with the arrest of Dale Richardson. According to Officer Campbell, Morales again attempted to interfere by running towards the police, screaming profanities and trying to get past him. Officer Campbell pushed Morales back, but she again rushed toward him. Officer Campbell stated that he attempted to push Morales back with an open-hand technique, aiming for the mass area. However, Morales moved and his hand struck the right side of her face.

¶ 11 Morales's brother Darius then approached and swung at Officer Campbell, whom he missed, and struck another officer. Officer Campbell apprehended Darius after a brief chase, then returned to the scene and arrested Morales. Officer Campbell's police report mentioned only the final incident, as it was the basis for Morales's arrest.

¶ 12 During Officer Campbell's testimony, the State introduced a video taken from a police car as a demonstrative exhibit. The video did not show any arrests. Yet, the video showed Morales moving backwards into view after Officer Campbell pushed her, as well as part of the pursuit of Darius.

¶ 13 Evanston police officer Anthony Sosa testified he was dispatched to Family Focus at approximately 2:50 p.m. on the date in question. He stated that roughly 100 people were screaming, swearing and fighting each other. Officer Sosa added there were few officers present, with many people being aggressive with each other and the police.

¶ 14 Officer Sosa instructed people to leave and warned that those who failed to comply would be arrested. Officer Sosa saw Richardson approaching the police trying to subdue Sheldon. Officer Sosa ordered Richardson to leave. Richardson failed to comply, so Officer Sosa took him to the ground and struggled to handcuff him. According to Officer Sosa, Morales kept approaching, swearing and trying to obstruct his arrest of Richardson. Officer Sosa acknowledged he did not mention Morales in his police report because he was not involved in her arrest.

¶ 15 Evanston police officer Basner (no first name given) testified he arrived at Family Focus between 2:30 and 2:45 p.m. He helped create the perimeter around the police arresting Sheldon. After that arrest was effectuated and the area was cleared, Officer Basner helped create the perimeter around the police arresting Richardson. Officer Basner testified that he saw Morales repeatedly attempting to interfere with Richardson's arrest. According to Officer Basner, Morales failed to comply with his repeated requests to stay away from the scene. Officer Basner further testified that Darius punched him while he was keeping people away from Richardson's arrest. He and Officer Campbell arrested Darius after a short chase. Officer Basner did not refer to Morales by name in his police report. However, the report noted he was approached by two females, one wearing a white shirt and another wearing a red shirt. Officer Basner testified

Morales was the woman in the red shirt. Officer Basner indicated that he observed 15 to 20 people who failed to comply with police orders to clear the area and he did not arrest everyone who failed to comply.

¶ 16 Following Officer Basner's testimony, the trial judge held a jury instruction conference. Defense counsel sought a nonpattern instruction on impeachment by omission, based on the police reports not naming Morales, which the trial judge refused. Defense counsel also sought the pattern instruction on impeachment by prior inconsistent statements, which the trial judge refused.

¶ 17 Defense counsel then raised the issue of eliciting Morales's conversation with Sergeant Davis about the complaint regarding Officer Campbell. Defense counsel wanted to ask Morales what she said to the sergeant and what the sergeant said to her. The trial judge noted that Sergeant Davis had not testified. Defense counsel responded, "He's already testified." The trial judge replied that counsel could ask Morales what she said to Officer Campbell, but counsel was referring to a conversation with Sergeant Davis, whom counsel did not have available to testify. The trial judge ruled Morales's conversation with Sergeant Davis was hearsay.

¶ 18 Following these rulings, the parties stipulated to the foundation for admitting 9-1-1 audiotapes requesting police assistance to control a fight at Family Focus. The State rested. Defense counsel moved for a directed finding, which the trial judge denied.

¶ 19 Defendant's older sister Crystal Morales testified she arrived at Family Focus after 2 p.m. She stated there were no fights taking place outside the center when she arrived. She saw her

brother Sheldon being escorted from the center by police. At one point, Sheldon dropped to the ground and wrapped his feet around a pole.

¶ 20 Crystal stated she and Richardson told the police Sheldon had a heart condition. The police shoved Richardson, who then removed his jacket, threw it on the ground, spread his arms, and said, "What the F?" The police tackled Richardson. Crystal saw Morales nearby, shouting "police brutality" and apparently videorecording Richardson's arrest with a cellphone. Crystal testified she saw Officer Campbell turn around, "lunge" and "sock" Morales in the eye. Crystal claimed Officer Campbell then struck Darius, who fled. Crystal tried to console Morales, who was crying. According to Crystal, while Officer Campbell chased Darius, she and Morales spoke to a female sergeant in a white shirt. Officer Campbell then approached and spoke to Morales before placing her under arrest.

¶ 21 Morales testified on her own behalf, stating she arrived at Family Focus between 1:30 and 1:40 p.m. and the repast was very crowded. She was unable to enter the main room of the center because the police were there due to arguments that had erupted. Morales stated she was not yelling or fighting with anyone. The arguments triggered a commotion, causing Morales to move outside to avoid being trampled.

¶ 22 According to Morales, she saw two police officers escort Sheldon from the building and instructing him not to reenter the building. Sheldon struggled against them and did not want to leave. Morales stated she approached and received permission to take Sheldon's money before he was arrested. As the crowd started running and more police arrived, Morales momentarily lost track of the arrest, but later saw Sheldon on the ground with his feet wrapped around a pole.

¶ 23 Morales testified similar to her sister regarding the police interaction with Richardson, whom Morales identified as Crystal's boyfriend. Morales stated she began recording Richardson's arrest and shouting "police brutality." Morales claimed she was standing five or six feet away and never tried to push past the police officers or even touch them. Morales did not remember anyone telling her to leave, but noted there was much shouting from many people.

¶ 24 Morales further testified she finished videorecording and "came back forward," but Officer Campbell pulled his arm back, lunged toward her and punched her in the eye. Morales stated the pain caused her to drop her cellphone and grab her eye. Crystal came over and was talking to her when they saw Sergeant Davis wearing a white shirt. Morales approached Sergeant Davis and spoke to her. While Morales was talking to Sergeant Davis, Officer Campbell came over and spoke to Morales. She replied to Officer Campbell, then was arrested by him.

¶ 25 The defense rested. The State then sought to introduce rebuttal testimony regarding the investigation of Morales's complaint against Officer Campbell. The trial judge refused to allow the testimony, ruling that the defense had not elicited evidence of the complaint.

¶ 26 Following closing arguments and jury instructions, the jury deliberated and found Morales guilty of resisting or obstructing a police officer. Morales filed a posttrial motion, challenging the sufficiency of the evidence, which the trial judge subsequently denied. Morales was sentenced to 21 days in jail. Morales filed a motion to reconsider her sentence, which the trial judge also denied. Morales filed an amended posttrial motion, arguing the trial judge improperly precluded evidence of her conversation with Sergeant Davis and improperly refused

the nonpattern and pattern jury instructions on impeachment by omission and prior inconsistent statements. The trial judge denied Morales's amended motion. This timely appeal followed.

¶ 27

DISCUSSION

¶ 28 On appeal, Morales contends the trial judge denied her constitutional right to present a defense by improperly excluding testimony regarding her complaint to Sergeant Davis as hearsay. Morales also argues her conviction must be reversed because the trial judge erred in failing to instruct the jury on impeachment by prior inconsistent statements. We address each point in turn.

¶ 29 I. The Excluded Testimony Regarding Morales's Complaint to Sergeant Davis

¶ 30 Morales first argues that the trial court erroneously sustained hearsay objections to testimony about her complaint to Sergeant Davis, thereby denying her constitutional right to present evidence in her defense. See *People v. Caffey*, 205 Ill. 2d 52, 90 (2001). Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. *People v. Banks*, 237 Ill. 2d 154, 180 (2010). Conversely, an out-of-court statement offered for a purpose other than to prove the truth of the matter asserted is not hearsay. *Banks*, 237 Ill. 2d at 180. Generally, hearsay statements are inadmissible unless an exception to the hearsay rule applies. *People v. Hammonds*, 399 Ill. App. 3d 927, 941 (2010).

¶ 31 Morales argues that we should review this issue under a *de novo* standard because, she alleges, the trial court's rulings on the hearsay objections were based on a misapprehension of hearsay law. See *Caffey*, 205 Ill. 2d at 89. However, the *Caffey* court rejected the argument for *de novo* review because "the trial court exercised discretion in making these evidentiary rulings,

i.e., the court based these rulings on the specific circumstances of this case and not on a broadly applicable rule." *Id.* In this case, the record similarly shows the trial judge exercised discretion based on the facts of the case, *e.g.*, the apparent unavailability of Sergeant Davis as a witness. Accordingly, we review a trial court's hearsay ruling for abuse of discretion. *Hammonds*, 399 Ill. App. 3d at 941-42. An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004); *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 32 In this case, the trial court's initial ruling on Morales's motion was premised on Morales being able to testify she complained to Sergeant Davis. The trial court's ruling following the testimony of the State's witnesses was that Morales could not introduce the conversation between her and Sergeant Davis, *i.e.*, what she said to the sergeant *and what the sergeant said to her*, because Sergeant Davis had not testified and Morales was not making Sergeant Davis a witness. The trial court later sustained an objection to Crystal's attempt to testify regarding what Sergeant Davis said. During a sidebar, the trial judge also ruled that the State did not open the door to evidence of the conversation by challenging Morales's use of the word "lunged" in her testimony. The trial judge did not specifically bar Morales from testifying she complained to Sergeant Davis or stating why she went to speak to Sergeant Davis.

¶ 33 Even assuming *arguendo* Morales was barred from eliciting the fact of the complaint to Sergeant Davis, the argument would still fail. Morales argues she sought to offer evidence of the complaint not to establish its truth, but to show Officer Campbell was aware of the complaint. However, showing the fact of the complaint would not in itself establish Officer Campbell was

aware of it. As the State notes, Morales did not elicit evidence that Officer Campbell heard the complaint. Morales maintains this point is "facetious" because she was not permitted to testify about the complaint at all. Again, assuming *arguendo* she was barred from such testimony, Morales points to nothing in the record showing she made an adequate offer of proof that Officer Campbell heard the complaint and demonstrating the admissibility and relevance of the testimony. See *People v. Thompkins*, 181 Ill. 2d 1, 10 (1998). Indeed, we note here that Morales testified she did not hear any of the police ordering her to leave the scene, which suggests it may have been difficult to hear conversations at the scene. Accordingly, we conclude the trial judge did not abuse her discretion in excluding the testimony as hearsay.

¶ 34 II. Impeachment By Prior Inconsistent Statements

¶ 35 Morales also argues her conviction must be reversed because the trial judge improperly erred in failing to instruct the jury on impeachment by prior inconsistent statements. Since the impeachment consisted of omissions from police reports, the trial court apparently believed that the pattern instruction at issue (Illinois Pattern Jury Instruction, Criminal, No. 3.11 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 3.11)) did not apply. This instruction, IPI Criminal 4th No. 3.11, encompasses omissions as well as affirmative statements. *People v. Eggert*, 324 Ill. App. 3d 79, 82 (2001). The pattern jury instruction regarding inconsistent statements is appropriately given when two statements are inconsistent on a material matter. *Id.*; see also *People v. Larry*, 218 Ill. App. 3d 658, 666 (1991). The committee comments to IPI Criminal 4th No. 3.11 indicate that the materiality of the prior inconsistent statement is an issue for the trial court to determine. *Eggert*, 324 Ill. App. 3d at 82. Whether to issue a specific jury instruction is within

the province of the trial court and its decision will not be reversed absent an abuse of discretion.

People v. Kopczick, 312 Ill. App. 3d 843, 851 (2000).

¶ 36 In *Eggert*, the defendant was convicted of the offenses of aggravated driving under the influence of alcohol and driving while license revoked. *Eggert*, 324 Ill. App. 3d at 80. This court ruled the arresting officer's trial testimony that he observed the defendant weaving across the lane was material because it was directly relevant to the issue of whether defendant was capable of driving a vehicle. *Id.* at 82. The issue of whether defendant refused field sobriety and breathalyzer tests was material because the jury could infer guilt due to his refusal. The officer's trial testimony that defendant was weaving and that he refused testing was impeached by the omission of these observations in his police report. *Id.* This court further ruled the general jury instruction on witness credibility was insufficient on the manner in which the jury was able to consider the evidence of the officer's omissions. The court reasoned the officer was the sole witness presented on the charge of driving while under the influence of alcohol, making the credibility of his testimony essential to the State's case. *Id.* at 83.

¶ 37 This case is readily distinguishable from *Eggert*. In this case, there were four police witnesses, not just one. Officer Campbell's police report mentioned only the final incident between him and Morales, but it was this incident that formed the basis for Morales's arrest. The other incidents were not necessary to establish Morales's guilt for the incident with which she was charged and tried. Other police reports did not mention Morales by name, but none of the other officers arrested Morales. As such, we conclude the omission of her name from other reports surveying a widespread commotion is minor and does not materially reflect on these

officers' credibility. Moreover, Officer Basner's report did refer to a woman identified in court as Morales. Furthermore, the jury here was given Illinois Pattern Jury Instruction, Criminal, No. 1.02 (4th ed. 2000), which directs the jury to evaluate the believability and weight of the testimony in light of any interest, bias or prejudice each witness may have. Given this record, we cannot conclude the trial judge abused her discretion in refusing to issue the proposed jury instruction in this case.

¶ 38

CONCLUSION

¶ 39 In sum, we conclude the trial judge did not abuse her discretion in excluding the contents of Morales's discussion with Sergeant Davis as hearsay. Moreover, even assuming *arguendo* Morales had been barred from eliciting the fact of the complaint to Sergeant Davis, Morales failed to show an adequate offer of proof that Officer Campbell heard the complaint to demonstrate the admissibility and relevance of the testimony. Lastly, Morales failed to show the trial judge abused her discretion in refusing a jury instruction on impeachment by prior inconsistent statements. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 40 Affirmed.